HONI SOIT QV MAL Y PENSE
V ET MON DROIT.

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DECIMARVM ET OBLATIONVM TABVLA.

A Tithing Table.

OR

Table of Tithes and Oblations, according to the Kings Eccleſiaſticall Lawes and Ordinances eſtabliſhed in the Church of England;

Now newly reduced into a Booke.

Contayning as well the very letter of the Law vnder which theſe rights be ſeuerally compriſed, together with ſuch Queſtions of Tything, and their Reſolutions by the Lawes Canon, Ciuill, and approued Doctors opinions of the ſame, as be ordinarily moued, and which doe often grow to controuerſies herein:

As alſo a briefe and ſummarie declaration of *Compoſition, Tranſaction, Cuſtome, Preſcription, Priuilege*; And how they preuaile in Tything.

Compiled by W. C. BACH. of the Ciuill LAVV.

LONDON,
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An. Dom. 1635.

A.p. 334.

ANNEXED HEREVNTO SVMMARILY, ſuch Statute Lawes of the Land concerning theſe rights, as haue been herein authoriſed, and now doe remaine in their force accordingly.

To the eaſie and plaine inſtructions of all the Kings Subiects Eccleſiaſticall or Lay, within his Maieſties dominions, *intereſſed, whether in theſe rights to demand them, or bounden to performe the ſame.*

Eccl. 25. Hallow thy Tythes vnto God with gladneſſe:

Prou. 3. So ſhall thy Barnes bee filled with plenteouſneſſe, and thy preſſes flow over with ſweet Wine.

THE PREFACE.

THE *Canon and Civill Lawes* (Christian Reader) since first King *Henry* of happy memory the Eighth, dismembred their bodies, and restored to the Diademe of the Land (over the state Ecclesiastical) the Ancient Iurisdiction of the Crowne, they haue and do lye hidden, such of them as K. *Henry* then continued, and K. *Edward* [b] that succeeded him, Intituled in his Raigne the Kings, and afterwards were the late Queenes deceased, and as they bee now rearmed, *The Kings Ecclesiasticall Lawes*, (the former statutes revived by Her Maiestie, [c] in the first yeere of her Raigne) they haue these Lawes, and doe lie hidden in manifold, darke, and dangerous corners, in practise onely familiar in Consistories, and their knowledge to the Countries obscure: hence are the manifold vntime-

[a] 25. Hen. 8. 19.

[b] 2. Ed. 6. 13.

[c] 1. Elizab. 1

ly Cuſtomes and Preſcriptions that wee have: I inveigh not againſt them, neither cuſtome or preſcription, that bee perfect now and in their perfect being, I would not be taken, or rather miſtaken ſo: but they be weeds in their growing & all their ingendring time, wherein (only) they give place to prevention; they bee Lawes of themſelues (in their ripeneſſe) inviolabled. If therefore ſome inſight into theſe lawes, and knowledge ſucceeding this long obſcurity, may worke another effect in the time to come, none can ſay vprightly now that he is, may be, or his poſterity after him (if not benefited) damnified thereby: happily I may be charged (in tranſlating) to haue damnified the Lawes, I haue ſhadowed (I confeſſe) their firſt and originall grace, ſuch beauty haue they and elegancy too, in the Latine tongue: but I write to Engliſh-men; and ſuch as not ſo much affect to heare of the beauty, as they be deſirous to vnderſtand the benefit of their Lawes: for ſuch I haue framed this *Tything Table*, and repleniſhed (as my ſlender skill would

4 Glo. & D D in c. vigilanti de præſcrip.

would ſerve) the ſame, with neceſſary, diſperſed and ſcattered lawes not hurtfull, conſidered as they be delivered, nor preiudiciall to the Royall prerogative, nor repugnant to the Lawes, Statutes, nor Cuſtomes of this Land. Tythes (by ſale) be turned into chattels[e], and made of ſpirituall, temporall things: in debate (of the right of patronage) in Tythes, and exceeding the fourth part of the value of the Church[f], where great wood is demanded in the name of *Silva Cædua*[g], in Tythes and Oblations, where there is any ſtate of Inheritance[h], and where they be demaunded, and be neither due nor accuſtomed[i], the Kings prohibition doth lie in all theſe caſes and no conſultation: otherwiſe, and without ſuch temporall mixtures, prohibition hath no place[k]: but the Iudge Eccleſiaſticall hath power to proceed, notwithſtanding the Kings prohibition[l]. Conceiving them therefore (*Chriſtian Reader*) as they bee meant, and mentioned to be preſented vnto thee, *viz.* As they bee meerely ſpirituall Tythes and Oblations,

[e] Art. cler. 9. Ed. 2. 1.
[f] 9. Ed. 2. 2. 34. Ed. 1. 1. de cõiunctim feoffatis.
[g] 45 Ed. 3. 3.
[h] 3. Hen. 8. 7.
[i] 13. Ed. 1. circ. agat.
[k] Fitz. de natura brevium. Fol. 50. de conſultatione.
[l] 9. Ed. 2. circumſpectè agatis. 13. Ed. 1.

and without any Temporall mixture, thou ſhalt not miſconſtrue the Author, nor deceive thy ſelfe. Farewell.

LONDON the Twenty ninth of *April.* 1591.

The Readers (ever) in the LORD,

VV. C.

A briefe Collection of the Letter and tearmes of the Law, with their *ſeverall Expoſitions in Engliſh: and of all ſuch queſtions of Tything which be mentioned and contayned* within the body of this Table, whereby every Tythable thing and queſtion that is moved and anſwered of the ſame, is readily found.

The First Queſtion.

Decima De *Frugibus*, 1. Of Harveſt fruites, ſowne, mowne, reaped, gathered, bound or looſe, in Heape, ſhocke or ſheafe.

1 When they be tithable, and ſuch other prædiall Tithes, whether it be lawfull to the owner to diſpoſe any manner of way of any part of the fruits before diviſion be made, and the Tenth part be ſevered from the Nine parts?

2 If a ſtranger ſhall preſcribe tithes in another pariſh, and there ſhall happen afterwards barren and waſt grounds to be tilled, whether the ſtranger that preſcribeth, or the Church where the grounds doe lie, ſhall reape the Tithes?

3 If one ſhall haue right of tyth in a wood, and that wood become afterwards arable ground, whether his right continueth in the Corne?

The Second Queſtion.

Decima De
- *Siluis cæduis*, 1. Of woods felled, and preſerved to grow againe.
- *Lignis*, 1. Of wood not in vſe, nor apt for Timber, but for fyring.
- *Thenitijs agrorum*, 1. Of trees planted for fencing of grounds, in fields, paſtures, and hedge-rowes.
- *Turuis*, 1. Of Turues growing in fenniſh & mooriſh ſoiles as in the Iſle of *Ely*.

1 Wood of 20. years growth and vpwards, whether it bee tithable or not? And what of lopping of timber trees?
2 When woods be felled and ſold, who ſhall anſwer the tith? the buyer, or the ſeller?
3 If the inheritance of a wood be ſold, that is in arrerages for tyth, whom the Parſon may implead?
4 Turues, amongſt what tythes they be reckoned?

The third Queſtion.

Decima De
- *Paſturis*, 1. Of paſture grounds.

1 If they be fed, how the tith ſhall be anſwered?

The

The Fourth Question.

Decima De { *Fenis*, i. Of Hay.

1 Hay, of what places? and what Tyth it is?

The Fift Question.

Decima De { *Lana*, i. Of Wooll.

1 Whether the ſheepe of Sons and Daughters be tithable (or not) with their fathers flocks wherein they do goe?

2 Where ſheepe bee remoued from one Pariſh to another, how the Tith is diuided by rate and proportion of time?

3 If ſtrange ſheepe bee brought to another pariſh and there be clipped or ſhorn, how they be tithable there?

The Sixt Question.

Decima De {
Agnis, i. Of Lambs.
Vitulis, i. Of Calues.
Porcellis, i. Of Pigges.
Pullis, i. Of Colts.

1 Whether the Parſon may expect his Lambe (the next yeare following) if the

pariſhioners number in any one yeere amounteth not to ten? And what, if he fayleth then?

2 When Ewes be removed, and other ſuch cattell and beaſts from one pariſh to another, how the ſeverall (*churches* be intereſſed in the Tyth of their Lambs, and ſuch other increaſe.

3 Of Lambe, calfe, Kid, colt, pigge, &c. and when is their Tythable time?

The Seuenth Queſtion.

Decima De { *Lacte*, i. Of Milke. / *Caſeo*, i. Of Cheeſe.

1 Milke and Cheeſe how? and when they be tythable?

2 If Cattell feed in one Pariſh and couch in another, how the profits be tythed?

3 Where Cheeſe is tythable, and the number of Cattell ſo ſmall that none can bee made; how the tyth ſhall bee anſwered for their ſmall proportion?

4 Where Milke of ſheep is tythed in kind, how they be tithable (for their paſture) in the VVinter, when they doe yeeld no ſuch profit?

The Eight Question.

Decima De { *Fructibus arborum,* i. Of Fruites of Trees.

I Of Apples and other such fruits of trees, what of their tythable time?

The Ninth Question.

Decima De { *Seminibus,* i. Of seeds: Hempe, Flax, Onions, Rape, and such like.
Herbis, i. Of Pot-hearbs.
Curtilagijs, i. Of places adioining to mansion houses, applied to seeds and hearbs.

I Of Seeds and Hearbes, what manner of tythes they be?

The Tenth Question.

Decima De { *Pannagijs siluarum,* i. Of mast, of Beech, or Oke, or such like.

I Of Mast, what, when it is given? and what, when it is sold?

The Eleuenth Queſtion.

Decima De
- *Molendinis*, 1. Of Mils, forced by wind, water, &c.
- *Vivarijs*, 1. Of Parkes, Warrens, pooles, ponds, &c.
- *Beſtijs guarenarum*, 1. Of wild beaſts vnder cuſtody &c.
- *Columbarijs*, 1. Of Doue-cotes, or houſes.
- *Apibus*, 1. Of Bees.

1 What manner of tithes they bee? And how they be tithable?

The Twelfth Queſtion.

Decima De
- *Aucupijs*, 1. Of Fowlings.
- *Venationibus*, 1. Of Huntings.
- *Piſcationibus*, 1. Of Fiſhings.

1 Beaſts, Fiſhes, Fowles, how (diverſly) they be tythed, (diverſly) conſidered?

The

The Thirteenth Question.

Decima De { *Cignis*, i. Of Swannes.
{ *Aucis*, i. Of Geese.

1 Of Swannes, Geese, Ducks, and how they be considered of.

The Fourteenth Question.

Decima De { *Ouis*, i. Of Egges.

1 Of Egges, where Tythes bee yeelded, whether chickens be tythable there?

The Fifteenth Question.

Decima De { *Artificijs*, i. Of Crafts, and manuall Occupations.
{ *Negotiationibus*, i. Of Trades by wares, Marchandise, &c.

1 Of personall Tythes, what time, place, and persons, be required in them, and of whom the Church is forbidden to receiue either personall Tyth, or Oblation?

The First Question.

Decima De *Frugibus*, 1. Of Harveſt fruites, ſowne, mowne, reaped, gathered, bound or looſe, in Heape, ſhocke or ſheafe.

1 When they be tithable, and ſuch other prædiall Tithes, whether it be lawfull to the owner to diſpoſe any manner of way of any part of the fruits before diviſion be made, and the Tenth part be ſevered from the Nine parts?

2 If a ſtranger ſhall preſcribe tithes in another pariſh, and there ſhall happen afterwards barren and waſt grounds to be tilled, whether the ſtranger that preſcribeth, or the Church where the grounds doe lie, ſhall reape the Tithes?

3 If one ſhall haue right of tyth in a wood, and that wood become afterwards arable ground, whether his right continueth in the Corne?

Queſtions of Tything, and their Reſolutions.

The First Queſtion.

1 PAriſhioners out of their Harueſt-fruits, ſpecified vnder the word Frugibus (before their Tythes aſſigned of the ſame) diminiſh their fruits, ſome one way, ſome another: admit to godly or prophane vſes: or

(as their manner hath beene) to the satisfying therein their labourers their wages. The question is, whether this be lawfull? It is answered, A stand vnto the Church: For this allowance (If any such be) not otherwise ought to be made, than tenth of the Nyne parts: and the reason is, Decima debet solui sine diminutione, &c. Tyth must be payd without any diminishing[a].

[a] c. Cum homines de decim. Glo c. erroris damnabilis. Const. prou. Ang. de dec. ver. erro te calculi.

2 The Parson of the Rectorie of A (iure præscriptionis) i. by right of prescription, hath interest in and to the prediall Tythes of the Parish Church of B, where there bee converted (into tillage) diuers barren, heath, and waste grounds, that neuer before yeelded any profit to the Church: The question is, (now) of these Tythes, and which of the Churches shall haue them? It is answered, that the Parish Church of B shall haue these Tythes, because they bee Decimæ novalium, i. Arising of such grounds that neuer were manured nor yeelded before any profit at all to the Church: and the reason is, by the foundation of euery Church, the Tythes in generall of that and euery Parish, are due to their owne proper and peculiar Church[b]. Now, for as much as the Church of A could neuer before be in Possession of the Tythes of these waste grounds, because they neuer were in being[c], and that the Law is, that Tantum præscriptum est, quantum est possessum, & non plus, i. So much (and

[b] c. Cum contingat. vbi glo. & DD. mod.

[c] l. Sine possessione. ff. de vsu cap.

(and no more) in prescription, than in possession[d]: And again, in that prescription is not extended ad futura, i. It reacheth not vnto profits of tythable grounds to come[e], Summæ æquitatis est, &c. i. The premisses considered, it standeth with great equity, in this case, that the Church of B should reape & receive these tithes[f].

d l. Quod meo. § fi. ff. de acquir. posses. cap. Auditis de præscript.

e Pan in vlt. notabili. in d. c. cum contingat.

f Host. Io. And in d.c. Cum contingat.

3 But note, it is otherwise where one shall be in possession of the Tyth of Corne, or of Pasture, or of Wood, or of any prediall Tythes whatsoeuer arising in the grounds wherein he prescribeth, howbeit afterwardes there bee planted or set and sown in the same any strange plant, seed, or hearbe, that never grew before in these grounds. For example: Millet is sowne or Saffron, where Corne hath beene sowne vsually and ever before, and as the maner is, in some parts of this Land to sow in their Pasture grounds the Hearbe that is called Glastum or Isatis, Cæsar writeth of the old Brittons that they vsed with this Hearbe to smeare their faces, to the end to seeme terrible to their Enemies in warre: we call it in English woadde or Woad. Againe, Apples, or Nuts, bee newly planted where never they grew before: and so Ex nemoribus, i. Of Woods that be converted to arable grounds: the Tythes in all these cases bee payable as before they were of the former fruites, and to whome the former fruites were tythable before, namely, to the Parson or Church

that preſcribeth, and the reaſon is, viz. Præſcriptio eſt realis cemenda. i. Terram concernens, non ſpeciem fructuum perceptorum, i. Preſcription is reall, that is to ſay, reſpecting not the new or neuer tythed fruits, but the tythable grounds that bringeth them forth[g]: In reſpect whereof, that is, of the grounds, the tythes whereof forepaſſed, haue beene (without diſcontinuance or other interruption) continued and poſſeſſed, it is thus affirmed (in theſe caſes) of preſcription, viz. Præſcriptio extenditur ad particularitatem iuris apprehenſi ſub unico iure ut univerſali, i. Preſcription is extended to euery particularity of right apprehended, as it were, vnder that particular, as generall[h]. Otherwiſe it ſhould be in poteſtate ferentis, i. In the owners power (changing the fruits) to preuent anothers right in the Tythes of his certaine, knowne, and tythable grounds: contrary to the rule of the law, viz. Id quod noſtrum eſt ſine facto noſtro à nobis auelli non poteſt, i. That which is mine cannot (without my fact) be taken from me[i]. Looke the ſtatute De novalibus, i. Of barren, heath, and waſte ground, 2. Ed. 6. 13. And looke the ſtatute for prediall Tythes, and Tithable places, 2. Ed. 6. 13.

[g] Ancha. in c Cum in tua. de deci. & Ant. But. in d. c. Cum in tua. eod.

[h] Ant. But. in c. præal.

[i] ff. de reg. iur.

The Second Question.

Decima De
- *Siluis cæduis*, 1. Of woods felled, and preserved to grow againe.
- *Lignis*, 1. Of wood not in vse, nor apt for Timber, but for fyring.
- *Thenitijs agrorum*, 1. Of trees planted for fencing of grounds, in fields, pastures, and hedge-rowes.
- *Turuis*, 1. Of Turues growing in fenniſh & moorish soiles as in the Isle of *Ely*.

1 Wood of 20. years growth and vpwards, whether it bee tithable or not? And what of lopping of timber trees?
2 When woods be felled and sold, who shall answer the tith? the buyer, or the seller?
3 If the inheritance of a wood be sold, that is in arrerages for tyth, whom the Parson may implead?
4 Turues, amongst what tythes they be reckoned?

The Second Question.

1 OF woods and wood, contained and specified vnder the words Silvis cæduis, Lignis, Thenitijs agrorum, some of them exceed the growth of Twenty yeares, and some of them not felled within the memo-

rie of man, peraduenture not of an Hundreth or two of yeares: there groweth a question of such woods for the Tythes of the same: It should seeme, the parishioner herein may plead for the one (against the Parson) the statute of Silua Cædua, that exempteth wood of Twenty yeares growth and vpwards, from the payment of tythes: and (for the other) both the Statute and prescription, in that the Tyths therein were neuer performed: interpreting the Statute no further than the Statute explaineth it selfe: It is answered by the Canons alleaged, so farre forth (with protestation) and no further, then the statute shall permit, that wood not in vse nor apt for Timber is tythable, body or bough, felled or lopped[k]. As for prescription it is answered, Præscriptio locum habere non potest, vbi illi cui jus competit agere non potest, cum cesset materia de qua experiatur, i. The cription hath no place, where the interessed (in his right) can make no demand, the matter ceasing whereupon he should worke: For example, Of wood neuer cut, the Tith could neuer be demanded[l]. But whether the loppings or bootes of such trees the which the Common Lawes of the Realme account timber be tythable or not, is not yet decided by that Law.

k c. Quanquàm. Provin. ang. co. ubi glo. in ver. excis.

l Gloss. cap. Sancta eccle-sia. provin. ang. co. ver. arborum. ad hoc l. arboribus ff. de usuf.

2 It is a question, when woods so felled bee sold, who shall answer the Tythes, the Buyer or the Seller? It is answered, The

The Buyer[m] shall answere the Tyth: and the reason is, Decima sequitur fructus, & cum onere fructuum decimæ transferuntur in alterum, i. Tythe doth follow the fruits, and fruits be translated into anothers right together with the burthen of Tythes[n].

[m] Ext de decim. c. Pastoralis.

[n] c. Præal. eod.

3 Where the Inheritance of a wood is sold the Tythes whereof for certaine yeares forepassed, by the Seller hath been detayned and wrongfully subtracted from the Church, It is a question whom the Parson may implead: It is holden he may implead the one or the other at his owne choyce[o], but he can recover but of one[p]. But by the statutes of the Land, the Seller only, in this case, shall bee impleaded and sued vnto treble damages, 2 Ed. 6. 13. And not the buyer who tooke not the Tyth away.

[o] Pet de ancha. & D.D c. cum homines eod.

[p] Ar. ad hoc de re iud. t. Bona fide. li. 6. Glo. provin. Ang de decim. ver. asportant.

4 De Turuis, i. Of Turues, they bee tythable, and comprehended vnder the word Lignis, because they be so applyed, that is, for fyring[q], and reckoned in the number and amongst prediall Tythes.

[q] ff. Deleg. 3. l. Ligni § lignorum verbo quid mirum.

The third Question.

Decima De {*Pasturis*, 1. Of pasture grounds.
1 If they be fed, how the tith shall be answered?

The Third Question.

1 OF Pasture grounds, when they be fed, it is a question how the Tyth shall bee answered? It must bee considered whose the grounds bee, whether the owners of the cattell that fed them, or a strangers of another Parish. In the first case, if the cattle be such that yeeld profit to the Church, the Tyth is satisfied in the fruits of the beasts[r]. In the other case, it must be considered of the stranger, whether he selleth or giveth frankly to the owner of the cattle, the pasturage of his grounds: the stranger if he sell it, is answerable for the Tenth Penny: the Parishioner, if freely he receiveth it, is answerable for the estimation[s]. But note, the estimation shall not be answered, but where the grounds with beasts be fed, Nullam Ecclesiæ utilitatem alias, &c. i. Yeelding otherwise no profit at all to the Church, of which sort be Horses, Oxen, & such other barren Beasts. In other profitable cattle, the tyth is intended (as aforesaid) to be

[r] Inno ext. de decim. c. commissum.

[s] c. Preal eod.

be answered in the fruits [t]. But note, that generally the occupier of the Pasture is to pay the Tyth, and so is the Custome.

[t] Iuxt. notat. per Inno. vt sup. glo. ver. dumdenda. prou an. co.

The Fourth Question.

Decima De { *Fenis*, 1. Of Hay.

1 Hay, of what places? and what Tyth it is?

The Fourth Question.

1 DE Fenis, i. Of Hay, according to the exposition of the word, the tyth is payable, viz. Of the grasse withered or greene, perceiued and taken in Meddow, Pasture, great or small, or in other place, places, or angles (so within the limits of the parish) whersoeuer [u]: Question hath beene moued of this Tythe to this effect, that is to say, whether it be prediall or personall: It is answered to be prediall [x]: For how be it the industry and labour of the person may seeme and be alleaged more to preuaile (as they tearm it) in the making thereof, then the nature of the ground, yet in that it is perceiued of the ground, and gathered of, and from a place certayne, in some one or other knowne, certaine, and limited Parish, it is tythable as other prie-

[u] Prou. sag. quoniam propter volumus.

[x] Ancha. cap. peruenit. eod

diall Tythes be [7], that is, to that Parish Church where the grounds doe lie. without Deduction of charges.

[7] Ad hoc c. pastoralis. ext cod.

The Fift Question.

Decima De { *Lana*, 1. Of Wooll.

1 Whether the sheepe of Sons and Daughters be tithable (or not) with their fathers flocks wherein they do goe?
2 Where sheepe bee remoued from one Parish to another, how the Tith is diuided by rate and proportion of time?
3 If strange sheepe bee brought to another parish and there be clipped or shorn, how they be tithable there?

The fift Question.

1 IF profits and increase of such profitable Beasts before mentioned, and specified in particular vnder the words Lana Agnis, question is moued to this effect, There be in owne Family diuers persons hauing to the number of 3, 5, 6, 8, or 10 Lambs or fleeces of wooll more or lesse, their sheepe be depastured and so be reputed part and parcell of the flocks wherein they walke, couch, and do feed: The question is of their Tythes, whether they be tythable with the flocks, or in their seuerall parcels: It is answe-

answered, In their seuerall parcels, and the reason is, Animalia quæ gregibus alienis admixta sunt, remanent eorum propria non quorum sunt greges, sed quorum sunt animalia: i. Beasts intermingled with other mens flocks, doe remaine notwithstanding proper and peculiar vnto those, not whose be the flocks, but whose be the beasts[z]. Howbeit in Countries where persons such as Sons, & Daughters, in their Fathers power, gouernement, maintenance, and finding, shall haue such beasts or cattle intended in Law, and counted in bonis profectio & adventitio, i. Accruing and growing by their fathers or friends by the mother side, by gift, procurement, or otherwise, in which beasts their fathers are interessed, in the vse and fruits, the bare property remayning to the Children, the tyths of these beasts shall bee reckoned with their Fathers[a], and not in their seuerall parcels, and the reason is, Vt ipsarum rerum quæ in fructu sunt & patri adquiruntur, pater soluat decimam, &c. i. Of things in increase and procured to the father, so shall the father be answerable for the tyth[b], the property notwithstanding reserued to him or her to whom it belongeth, his son or daughter. But for that Patria potestas, i. That legall power and prerogatiue of Fathers is not in vse, neither yet Profecticium nor Aduentitium peculium are knowne in England, the beasts of Sonnes and Daughters here mentio-

[z] c. Cle. c.

[a] Arg. ad hoc ff. per quas personas nobis 51.

[b] Glos. prouang. de dec. ver. decimalanæ.

tioned (in respect of their tyth) shall not be reckoned with their fathers cattle, but as the cattle of other strangers: and what is giuen by the Father to the Sonne or to the Daughter, is their owne, except the Father by expresse words shall reserue the fruits of such cattle so giuen, to himselfe.

2 Where such cattle be remoued from Parish to Parish, and question be made what proportion of the tythes is due to each Parish, the custome of the place must be obserued: otherwise the law is, viz. Quælibet Ecclesia pro rata temporis portione decimas percipiet, i. Euery Church shall receiue it tythes by rate and proportion of time: but the question is, of what space this rate and proportion is meant? It is answered, of xxx. dayes, and so to be rated by Thirties from Thirty to Thirty, Minori trisginta dierum spatio in rata temporis, minimè computando, i. Under or lesse then the space of xxx. dayes not to be counted in rate and proportion of time: for example, The Parishioner hath forty Sheepe which yeeld him at shearing day Fourescore Pounds of Wooll: that Church is interessed intirely in the Tyth in whole Parish the whole yeere they couched and depastured: that Church in the halfe, that is, in the Tyth of Forty pounds where the halfe yeere they couched and depastured: that Church in Twenty pounds where they couched three months and depastured: and so ratably

Text. proin. ang. ca. quoniam vt audiuimus. eadem.

tably foure monthes, fiue monethes, more or leſſe accordingly: and that Church in whoſe Pariſh they couched and depaſtured but One Month, that is xxx. dayes, but in the tyth of the Twelfth part thereof, that is, of the whole Foureſcore pounds, but the Tenth of Sixe Pounds and a halfe, and vnder thirty dayes as afore is ſaid, no allowance at all[a]. But note, if the whole time they couch in one Pariſh, and depaſture in another, the Tyth ſhall be devided[c].

[a] d. c. Verſed ſi oves.

[c] § ſi vero. conſt. preal.

3 If peraduenture they come from a ſtrange and vnknowne place to any Pariſh to bee clipped or ſhorne, there the tyth muſt bee payd, except it may appeare the ſame to be ſatisfied to the Church whence they came[f].

[f] § & ſi oves conſt. cad.

The Sixt Question.

Decima De
- *Agnis*, 1. Of Lambs.
- *Vitulis*, 1. Of Calues.
- *Porcellis*, 1. Of Pigges.
- *Pullis*, 1. Of Colts.

1 Whether the Parson may expect his Lambe (the next yeare following) if the parishioners number in any one yeere amounteth not to ten? And what, if he fayleth then?

2 When Yeawes be remoued, and other such cattell and beasts from one parish to another, how the seuerall *Churches* be interessed in the Tyth of their Lambs, and such other increase.

3 Of Lambe, calfe, Kid, colt, pigge, &c. and when is their tythable time?

The Sixt Question.

1 FOr Tythes in profitable beasts, the Parson may expect the fall of the Tenth the next yeare following, if the number in any one yeer amounteth not to ten, according to the text of the constitution[1], viz. Vel expectet rector usque ad alium annum donec plenariè decimum agnum possit recipere, si maluerit: i. Or let the Parson (if so he had rather to

[1] Text provin. ang. ca. quoniam propter de decim.

to doe) expect another yeare, till he may fully receiue his tenth Lambe. Now it falleth out the Parson vseth his liberty and refuseth his Lambe at seauen, and his halfe pence at Six, and the Parishioner the yeare following hath neuer a Lambe at all: The question is, how the tyth shall be satisfied? It is answered, (in this case) the Parson hath no remedy in law, and the reason is, à principio malè eligendo fuit in culpa, ergo in hoc sibi imputetur, i. He made his choyce but ill at the first, which was his owne default, and therefore he must blame himselfe [h]. Yet Lyndwood affirmeth in this case, That in regard of the Church, in respect whereof tythes ought not to be lost, and in regard of the party himselfe, the owner of the fruits, who without sinne cannot detaine by any colour the rights from the Church, though the Parson (for his owne sake) cannot relieue himselfe Iure actionis, i. By right of action: yet for the Churches sake Officium Iudicis, i. The Judge his office may be desired [i].

2 Yeawes bee sometimes remooued from grounds to grounds, from parish to parish, the question is, (in this case) of the right of their tythes: It is thus answered by the text law [k]. viz. The tyth of Lambe is payable in manner and forme as be the tyths of Calues and colts and such other like tythable increase, mentioned to bee Pigge, kid, &c. of which the Law determineth thus, viz. Habita ratione ad loca

[h] Arg. ad hoc inst. quod cum eo qui in alt. pot. § cæterum autem. & glo. const. prou. præal. verb. possit recipere.

[i] c. verb. const. præal.

[k] c. Quoniam ut audivimus, const. provin. ang. § agni. eod.

diversa vbi gignuntur, oriuntur, & nutriuntur, & ad moram quam traxerint in eisdem particulariter decimentur, i. They are tythable by rate and proportion (particularly) to the seuerall Churches in whose parishes they were ingendred, brought forth, and nourished[l]: for example, The Yeaw goeth fiue months with her Lambe, they put them together the Male and Female the last of September, where they coupled they remaine one month: they bee remoued to a second parish, to a third, to a fourth, and to a fift, where they be depastured seuerall Months: in this case Vnusquisque pro tempore suo: i. Euery Parson for his time[m], that is (the seuerall times and places considered) the seuerall Churches in the tythes haue seuerall rights accordingly[n].

[l] Ca. & § præ.

[m] Glo. c. & § præall. verb. particulariter.

[n] C. & § præ.

3 And touching the question of their tythable time, it is answered thus, Fœtus ablactatus esse debet antequàm præstetur, i. They must be weaned, weanable, or of strength to liue without the damme[o], except custome hath obserued therein a time certaine, the which where so it is, there it must be continued. Looke custome the 6.

[o] Rebuff. co. q. 6. un. 30. Inno. Host & alij in ca. cum homines. eod.

The

The Seventh Question.

Decima De { *Lacte*, i. Of Milke;
{ *Caseo*, i. Of Cheese.

1 Milke and Cheese how? and when they be tythable?
2 If Cattell feed in one Parish and couch in another, how the profits be tythed?
3 Where Cheese is tythable, and the number of Cattell so small that none can bee made; how the tyth shall bee answered for their small proportion?
4 Where Milke of sheep is tythed in kind, how they be tithable (for their pasture) in the Winter, when they doe yeeld no such profit?

The Seventh Question.

1 MIlke and Cheese, viz. of kine, of sheep, or of Goats, they be reckoned as In pecudum fructu, i. In the increase of such cattell[r], as also be Lana & fœtus, i. Wooll, Calfe, Kid, & Lamb, whereof mention is made in the fifth and sixt questions before: And touching question herein to be made, suppose of the milke when it is perceived & taken, of the ir. parts thereof (when the tenth is deducted) there be made [s] cheeses it is answered, in this case; The cheeses are

[r] ff. de vsufr. l. in pecudum. inst. de re. di § in pecudum.

not to be tythed[q]: for cheeſe is not tythable but where milke is not tythed: and ſo of the other: briefly, they be tythable either of them tempore ſuo, i. In their ſeaſons[r], and ſo long, and ſo ſoone, as either Milke or Cheeſe ſhall be perceiued and taken (in their kinde) by the Pariſhioner: there can be no cuſtome of intermiſſion to the contrary. Looke Cuſtome, the 3. And what the Law of cuſtome may bee in this caſe, followeth here the 3.

[q] de reg. iur. in 6.

[r] c. quoniam propter præ. de decim.

2 Sometime theſe cattell be depaſtured in one Pariſh, and couch in another, in this caſe it may be demanded, what the law determineth of the tyth? It is anſwered in the text Law, viz. Quod inter Rectores diuidatur, i. In this caſe the Parſons ſhall diuide[s].

[s] c. Quoniam vt audiuimus. præal. § decima.

3 Queſtion alſo herein is moued further in Law[t], where ſuch tythes be payable in kind, and the number of cattell ſo ſmall as Lyndwood ſuppoſeth[u] of ſome one or other Pariſhioners, which haue not onely three, two o, or peraduenture but one only Cow, and thoſe, or that to be milked but alternis diebus, i. But each other day, by reaſon whereof the Pariſhioner can make no cheeſe at all: what is the Churches right in this caſe? It is anſwered in the text Law[x], viz. Conſuetudini locorum duximus relinquendum, i. The cuſtome of the place muſt be obſerued: prouided the Cuſtome be, that Cerum quid ſoluatur, i. That ſomewhat be payd in conſideration and lieu

[t] c. quoniam propter. præ. § quid verò.

[u] in cap. & § præal. verb. modicitatem.

[x] c. § præal. in fin.

[y] ext. e. ti. c. in aliquibus.

for

for custome herein (as in all other cases of tything) cannot exclude solutionem decimæ, i. It cannot intirely take away the payment of the tythes of such profits as arise, as may appeare in custome the 3. Only it may limit Solutionem decimæ, i. Custome may moderate the payment of Tythes. Looke custome the 4. Hither (by a Constitution prouinciall of England) also be referred Calfe, Colt, Pigge and such like, that is, when their number is so small that they cannot bee tythed: it is the Chapter Quoniam vt audiuimus, and Paragraph Quid verò, which Constitution Lyndwood affirmeth vpon the same Paragraph, that it extendeth not to Wooll and Lamb, but citeth there another expresse and peculiar ordinance for the same, viz. If the Parishioner shall haue sixe Lambes or vnder, he shall yeeld for his Tyth for euery Lambe a halfe-penny: if seauen Lambs, he shall yeeld a Lambe for his tyth, and receiue three halfe-pence: if eight, a peny: if nine, the Parishioner (only) receiueth a halfe-peny of the Parson, or the Parson may expect, according to the first question before. Et ita intelligendum est de decima Lanæ. i. The same ordinance and prouinciall constitution is had of Wooll. It is the Chapter Quoniam propter, and Paragraph De nutrimentis, in the title of Tythes.

4 Post festum, &c. i. after the Feast of S. Martin in winter, sheepe be eftsoones remoued

from parish to parish, or else they doe continue in one and the same parish from that feast till shearing day ensuing: the question is, of their tythes? It is answered, they be tythable thus, viz. Habita ratione ad numerum ovium Pascua estimentur, i. The pasture in this case must bee considered (for want of their milke in this season) by the head or number of the Sheep that depastured in them [z], and so shall the tyth bee rated and yeelded [a]: by rate and proportion of time (by the month [b]) as Lyndwood inferreth, and as it is said of thirty daies, and by thirties, and so from thirty to thirty, as in the first question before of Wooll.

[z]. Quoniam vt audivimus. præall. § quod si prou. aug. c. [a] c. § præ., c. [b] Glos. c. § præal. verb. estimentur.

The Eight Question.

Decima De { *Fructibus arborum,* } 1. Of Fruites of Trees.

1. Of Apples and other such fruits of trees, what of their tythable time?

The Eight Question.

1 FRuits of trees, viz. Apples, pears, wardens, &c. the question is of their tythable time: it is answered, Statim fructibus collectis, i. So soone and immediatly when the fruites shall

shall be gathered [c], and the reason is, Quia minùs soluit, qui tardiùs soluit, i. He diminisheth his duty that delayeth the time [d]: if therefore the Parishioner shall gather his fruits, and neither pay the Tythes presently, nor monish the parson to receive them, but subtract them, or that (otherwise) they bee impayred or lost, tenebitur, saith the Law; that is, The Parishioner is bounden [e]: to what satisfaction looke the Statute 2. Ed. 6. 13. for fruits be Tythable, and prediall [f].

[c] c. cum homines, eod.

[d] l. si cui in fine. ff. de verb. sig.

[e] c. cum homines præ. eod. text.

[f] c. 7. e. ad Apostolicæ. c. peruenit eod.

The Ninth Queſtion.

Decima De
- *Seminibus*, i. Of ſeeds: Hempe, Flax, Onions, Rape, and ſuch like.
- *Herbis*, i. Of Pot-hearbs.
- *Curtilagijs*, i. Of places adioining to manſion houſes, applied to ſeeds and hearbs.

1 Of Seeds and Hearbes, what manner of tythes they be?

The Nynth Queſtion.

1 SEeds and hearbes, viz. of Flaxe, Millet, Hempe, Leeke, Onion, Rape, Percely, Sage, Mint, Rue, &c. comprehended vnder the words Seminibus, Herbis, Curtilagijs, they be Tythable[g], as they be perceiued and taken in Gardens, or in the fields, either of the ſeed, or of the hearb before the ſeeding time[h], Niſi parochiani competentem fecerint redemptionem, i. Except the pariſhioners ſufficiently ſhall redeeme or compound for the ſame[i], theſe be Minutæ decimæ, i. Smal tithes according to the Euangeliſt[k], vz. Ye tyth mint and Rue, &c. and therefore in them no great queſtion to be made.

[g] c. quoniam propter præ. prou. ang. c.

[h] Concor. ext. eo. c. ex parte canonicorum.

[i] c. quoniam propter præ.

[k] Lu. 11. Ho. c. ex multiplici. eo.

The

The Tenth Question.

Decima De { *Pannagijs* / *siluarum*, } i. Of maſt, of Beech, or Oke, or ſuch like.

1 Of Maſt, what, when it is given? and what, when it is ſold?

The Tenth Queſtion.

1 BY the Chapter Sancta Eccleſia, in the prouinciall Conſtitutions of England, and tytle of Tyths, the tyth of Maſt and of other ſuch wood and wild fruits, be payable, viz. Si vendantur, i. If they bee ſold[l]: that is, (as the gloſſe inferreth) of the tenth peny, if they bee ſold; otherwiſe, that is, if Swine francke ly and freely receiued and fed, without conſideration of charges to the owner, in this caſe Tranſeunt fructus cum onere, i. The fruits do paſſe with their charges[m], viz. with the burthen of Tythes.

[l] c. Sancta eccleſia pre.

[m] glo. in d. c. verb. ſi vendantur. vbi ad hoc ext. eo. c. paſtoralis, & Inno ext. c. commiſſum. e.

The Eleventh Queſtion.

Decima De
- *Molendinis*, i. Of Mils, forced by wind, water, &c.
- *Vivarijs*, i. Of Parkes, Warrens, pooles, ponds, &c.
- *Beſtijs guarenarum*, i. Of wild beaſts vnder cuſtody &c.
- *Columbarijs*, i. Of Doue-cotes, or houſes.
- *Apibus*, i. Of Bees.

¶ What manner of tithes they bee? And how they be tithable?

The Eleventh Queſtion.

¶ QUeſtion hath beene moued of the tyths of Mils, Parks, Ponds, Warrens, Doue-houſes, and Bees, to this effect, viz. Whether they bee predial, or perſonall? it is anſwered, They bee predial, and tythable without deduction of charges [n], for the reaſon alleaged in the fourth Queſtion before. And they bee tythable thus; that is to ſay, not the Tenth of the rent for milles (as they tearme it) the tenth peny, nor for Bees, the Tenth Bee, or Swarme, or Hiue, but De prouentibus molendinorum, i. The tenth meaſure of Corne for Milles [o], and ſo for

[n] DD. in cap. paſtoralis, & alijs ca. eod.

[o] c. quoniam propter, pre. § de proventibus. & ibi glo. verb. integrè.

for Bees, the tenth measure of Hony, the tenth waight of ware, briefly, De cera & melle, i. Of Honie, and ware [p]. And the law and reason is of these tyths, especially of Mylles, as of other prediall tythes, whereof (for example) it is sayd, Transit herba pasta cum onere suo ad dominum bestiarum, i. Where grounds or pastures be demised, or their Herbages sold, the owner of the beasts is chargeable with the tyth [q]. Especially for the practise of England, looke what is sayd in the Third Question before. Hither be referred Parks, Ponds, Doue-houses, &c. for Fructus transit cum onere suo, i. Fruits be lyable to their charges. Look in the Second Question before, 2.

[p] Host. & alij. nuntios. c.

[q] Adhec. ff. de vsuf. l. vsu. fructu legato. & l. item si fundi.

The Twelfth Question.

Decima De { *Aucupijs*, i. Of Fowlings. / *Venationibus*, i. Of Huntings. / *Piscationibus*, i. Of Fishings.

1 Beasts, Fishes, Fowles, how (diversly) they be tythed, (diversly) considered?

The Twelfth Question.

1 THe profits that be mentioned and contained vnder the words Aucupiis, Venationibus, Piscationibus, i. Of fowlings, Huntings, fishings, question hath been moued of the tythes of the

same, viz. The Parishioners of A. one of them fowleth, another hunteth, the third fisheth, in the fields, grounds, and Riuers of B, the question is of the tythes, of their aduantages taken, and which of the Churches bee interessed in the same, vz. whether the Church of A, where the parishioners inhabite, or the Church of B, where the profits were taken? It is thus answered, vz. If the Parishioner had of the owners of the places francke and free liberty to fowle, hunt, and fish, the Church of A. that is, their owne parish Church shall bee intirely interessed in them, as in personall tythes [r]: but if any consideration be required, either in money or in part of their gayne, that profit onely receiued by the owner, is prediall and tythable to the Church of B. that is to say, in that parish where the fields, grounds, and Riuers do lye [s]. De cæteris verò, i. Of the residue, that is to say, of the cleere gayne of these Beasts, fishes, and fowles, all charges and expences, in, about, belonging, and concerning these profits taken, deducted [t], the Parishioners that tooke them be chargeable withall to their parish Church of A [u], mentioned before: and the reason is, the Fowles, Beasts, and Fishes be taken artificio, ministerio, & opere hominis, i. By the art onely, labour, and industry of man, from whence proceedeth personall tythes [x], payable onely where the parishioners inhabit. [y]. But if the consideration mentioned here, required

[r] Inno. in ca. non est, eod. & ibi Host. verb. de venatione.

[s] Inno. in & Host. cap. & verb. præal.

[t] DD. præal. in ca. pastoralis, eod.

[u] DD. in d. c. Non est ibi idem notper DD. præ. in decimis a vium & ferarum gloss. in pre. c. quoniam propter § de piscationibus provin. ang. eod. verb. debito modo.

[x] c. ad apostolicæ. eod.

[y] c. questi. 16. q. 1.

quired and taken by the owners, commeth not by art, or industry, but Ex humo, i. By way only, and meanes of the ground [z], from whence do arise all prediall Tythes [a]: payable only in the place and parishes within whole bounds and limits they are [b]. Thus they bee diuers, these tythes, diuersly respected, that is to say, prediall or personall; note the difference. Note also, that where such tythes bee demanded, it is where such art, industry, and trauell is answered and rewarded, not with pleasure [c], but with profit [d]. Question hath further beene mooued of these profits and aduantages aforesayd, to this effect: viz. The parishioners mentioned of A. had francke and free leaue and liberty to hunt, fish, and Fowle within the fields, grounds, medowes, riuers, and running streames of B. mentioned before: they tooke, preserued, and reserved alive their beasts, fowles, and fishes, and so they conuaide them to certain their owne proper and priuate grounds, within the bounds, compasse, and limits of another parish, than either of A. where they dwell, or of B. where they tooke them: they include them (there) these beasts, fowles, and fishes, and compasse them within Parks, Warrens, ponds, pooles, Houses, such as bee mentioned & comprehended vnder the words Vivarijs, Columbarijs, in the Eleuenth question before. Thus they feed and nourish them, and they breed, and increase in their kindes:

[z] Inno. Host. in c. non est præal. cod. verb. de venatione.

[a] c. 1. c. ad apostolice. c. pervenit. præ. eod.

[b] cap fin. de parochijs.

[c] Rebuff. co. q. 8. nu. 17.

[d] Ancha. in præal. c. non est. co. col. 2.

now, in that these incloted and limited places do alter and change (in law) the nature of the profits of the nourished Creatures within them [c], which of the Churches haue right to the Tythes? It is thus answered, viz. They were included at the first as they were taken, that is, by art and industry of man [f]: howbeit they increase not by industry and art, but by the nutriment and nourishment of the waters and grounds, where they liue ex sola gratia Dei, i. Of the meere grace & bounty of God [g]: and therefore for the rate, value, and proportion of themselues, they remaine these profits as they were taken at the first, that is, personall: Tythable to the Church of their Parish that tooke them [h]. But their increase is prediall, Tythable to the Church within whose lymits they be, and be fed, and nourished [i]. The circumstances of these tiths mentiõed in these cases, according to that worthy and of famous memory Hostiensis, doe make them neither meerely prediall, nor meerely personall, but mixt Tythes [k]: payable notwithstanding as prediall and personall diuersly respected as afore layd. So, consider thus (briefly) of these Tythes, that is to say, considered as they be included within compasse, limits, and bounds (from their naturall liberty) tyed and restrained to the same, as in ponds, parks, warrens, houses, and in such like lymited places, they be prediall Tythes; but considered as they

[c] Rebuff. com. 14. & 15. ad hec Inno. & Pan. in d. c. non est.

[f] Inno. & Host. in d. c. non est.

[g] DD. præ. in d. c. non est.

[h] Pan. in cap. præal. & ibi An. de intellectu Hostiensis ad idem.

[i] Pan. & D D. in d. c. non est.

[k] Host. in ca. præal.

enioy

enioy (at their will) their naturall liberties, as Fishes, the Sea, Fowles, the Ayre, and Beasts, the Fields; in that they are not reckoned of any place certayne, their Tythes be not prediall but personall: touching therefore question herein to be made, to what Churches they be due? It is answered, as of prediall and personall Tythes: that is, the one to that Church in whose Parish these lympted places aforelayd do lie that doe make them prediall; the other to that Church in whose parish the person doth inhabit that maketh them personall. And this is the difference.

The Thirteenth Question.

Decima De { *Cignis*, i. Of Swannes. / *Aucis*, i. Of Geese.

1. Of Swannes, Geese, Ducks, and how they be considered of.

The Thirteenth Question.

1 SWannes, Geese, and Ducks, bee distinguished thus, viz. whether they bee Volantes, i. whether they be wild & do flye, or be tame, or not: this considered, the profits be tythable accordingly: for example, The Cygnets, Si nascuntur in loco certo, & suscipiuntur à loco certo, i.

If they be brought forth and to be taken in and from a certaine and knowne place, they be prædiall and tythable as prædiall tythes: if from incertaine places, they be perſonall, and ſo they be tythable, viz. as perſonall Tythes[l]. It is affirmed of them, as of beaſts, fowles, fiſhes[m], in the queſtion laſt before. Hither by the chapter Sancta Eccleſia, in the Prouincials of England, be referred Geeſe and Ducks.

[l] Gloſſ. in c. ſancta Eccleſia præ. § 1. ver cignorum

[m] DD. ext c. ait. c. non eſt.

The Fourteenth Queſtion.

Decima De { *Ouis*, i. Of Egges.

1 Of Egges, where Tythes bee yeelded, whether chickens be tythable there?

The Fourteenth Queſtion.

1 DE Ovis, i. Of Egges, it hath been moued whether they be tythable in ſuch places where tyths be yeelded of Chickens? By the written law it may be anſwered, as of milke & Cheeſe in the Seuenth Queſtion before, the 1. Howbeit Cuſtome in this caſe preuaileth, as experience ſheweth in ſome parts of this Land[n].

[n] Gloſſ. in. d. c. ſancta eccleſia. cap. quoniam ut audiuimus var. pulli.

The

The Fifteenth Question.

Decima De { *Artificijs*, i. Of Crafts, and manuall Occupations. / *Negotiationibus*, i. Of Trades by wares, Marchandise, &c.

1 Of personall Tythes, what time, place, and persons, be required in them, and of whom the Church is forbidden to receiue either personall Tyth, or Oblation?

The Fifteenth Question.

1 TRades, Crafts, and Manuall Occupations, they be personall, and of the profits do arise meere personall tythes: touching therfore first their Tythable place, it is answered in the Twelfe question before. Of their Tythable time, it is answered in fine anni, i. They bee payable at the end of the yeare [o], and as our custome is, at Easter. Of persons that be chargable with these personall Tythes, it is answered of such persons, which of Custome haue, or of right ought to haue payde their personall Tythes [p]. Looke the Summaries of the Statutes ensuing. There are of these personall Tythes (in diuers cases) Opinionum conflictus, i. Diuersities of opinions [q]: but herein they agree, viz. Hæ Decimæ personales, magis in difficultate, & subtilitate, quàm

[o] Gloss. in c. reuertimini. verb. annus.

[p] 2. Ed. 6. 13.

[q] Rebuff. q. 13. nu. 44. & ibi. cir. Bur. in c. parochianos in fin. eod.

quàm vtilitate consistunt, i. They are, these personall Tythes, more intricate then profitable[r]: onely this (to conclude) must bee noted, that is to say, all persons (consideration had as afore is sayd) be bounden to offer their personall Tythes to the Church, but the Church is forbidden (of all persons) to receiue them[s]: for example, The Harlot, the Robber, the Vsurer, &c. they be not exempted, but the Law reiecteth them, their personall Tythes, and Oblations: Non inferas mercedem meretricis, &c. i. Thou shalt not bring the hire of an Whore, nor the price of a Dog into the House of the LORD[t]. And for the other, Quæstus fit ex peccato, i. Their gaine ariseth of sinne: the Church is therefore forbidden to receiue of them, Nè ipsorum videatur approbare turpitudinem, i. Least the Church should seeme to approue their Iniquities[u].

(***)

[r] Host. in ca. pastoralis in fin. eod. & 10. de tur. cre. in c. revertimini præal. nu. 12. ver. ad septimum. 16. q. 1.

[s] Host. in. ca. ex transmissa. eod. arg. ca. Oblationes. 90. dist. Deut. 23.

[t] c. miror 17. q. 4.

[u] c. si tantum 6. q. 2. hec Rebuff. q. 5. nu. 18. 8. 19.

¶ Heere doe end the Questions of Tything, moved (in times past) and answered: *and which be now vrged (ordinarily) and decided at this day.*

Of

Of Compoſition, Tranſaction, *Cuſtome, Preſcription, Priuilege: and how* they prevaile in Tything.

¶ Of Compoſition.

COmpoſition (by the Canon lawes) holdeth or faileth diuerſly reſpected: and it is firſt to be conſidered of as it hath beene made and had inter Clericos, i. Betwixt Clerks themſelues; and then it hath tended either Transferendis decimis, i. To the tranſlating of Tythes from one Church to another: Vt quæ vni Eccleſiæ decimæ debentur, alia recipiat, i. That one Church receiue Tythes which be due to another. And the Compoſition herein holdeth [a], and the reaſon is, Non refert quæ Eccleſia decimas habeat, modo Eccleſiæ perſoluantur, i. It forteth not of Tythes (ſo the Church enioieth them) what Church receiueth them [b]. Howbeit, the nature and kind of the Tythes thus tranſlated, muſt bee conſidered, namely, whether they be perſonall or prediall Tythes; if they be perſonall, the Compoſition

[a] c.2.d. tranſ. c.dilecti.eo.

[b] c.3.eod.

ſition that tranſlated them holdeth not, and the reaſon is, Ne occaſio tribuatur avagandi & divina extrà parochiam audiendi, i. Leaſt occaſion ſhould be giuen to the people of wandring, and hearing of Diuine Seruice from their owne Pariſh Churches [c].

[c] c.2.ſup.ti. 1. Rebuff. in q. 13.nu.17. de decim.

2 If they be prædiall, the Compoſition holdeth, Inita cum authoritate Epiſcopi, i. The authority and approbation of the Biſhop of the Dioceſſe thereunto had; which compoſition ſhall bind both the Clerke and his ſucceſſors [d]: otherwiſe without the Biſhops confirmation, it ſhall not onely bind the Clerke that yeelded thereunto, and not touch his ſucceſſors at all [e].

[d] c.2.&c. veniens, de tranſ.

[e] c.veniens.8. præal.

3 Or the Compoſition hath tended Remittendis decimis, i. To the remitting of Tithes, Vt tota decima clerico remittatur, namely, That to a Clerke Tyths ſhould be intirely remitted, this compoſition holdeth not [f], and the reaſon is, Decima omnino tolli non poteſt, [g]. Tyth may not wholly be taken away [g].

[f] Rebuff. q.13. nu.27. de decim.

[g] q.nu. præ. Rebuff.

4 Secondly, compoſition muſt be conſidered, as it hath been ſaid inter Laicos, & Rectorem, i. Betwixt Lay-men and Clerks, which compoſition alſo muſt be reſpected thus, namely, whether it be De præteritis decimis, i. Of Tythes forepaſſed, or de futuris decimis, i. Of Tythes to come. In the firſt caſe, this compoſition alſo holdeth, yea though it be Gratuita, i. without conſideration or allowance at all [h]: In the ſecond caſe if the compoſition be, Vt a-

[h] c. ſuper. de reb. eccle. non alien.

liquas

liquas decimas non ſoluant, i. That tythes bee not payd at all, Non eſt admittenda, i. Not to be admitted [i]. If the compoſition be, Vt integra decima non ſoluatur, i. That tyth bee not wholly payd, but in part, it holdeth: howbeit not otherwiſe but confirmed by authority ſupreame: for the Biſhops confirmation herein ſufficeth not, for none could exempt from tything, nor diminiſh the quantity of the ſame, but the Supreame power [k], as it followeth in Præmulege.

[i] Rebuff. q. 13. præal.

[k] Text in ca. venerabilis de conſeſ. & ibi Pan.

Of Tranſaction.

1 TRanſaction and Compoſition doe differ in this, the one is Gratuita conuentio, i. A voluntary, franke and free agreement of things not contended for, which is ſaid to be compoſition: the other, De re dubia & lite incerta (aliquo dato vel retento) pactio, i. A forced couenant or agreement (for ſomewhat giuen or receiued) of things litigious, incertayne, and doubtfull in controuerſie [l].

[l] 1. ff. de tranſ. C. e. c. ſuper eo.

2 It muſt be conſidered of Tranſaction, as before it hath been ſayd of Compoſition betwixt Lay-men and Clerks. Looke Compoſition 4. Tranſaction (if it be of Tythes forepaſſed) holdeth; yea though the conſideration

had, be of things meere temporall: and the reason is Fructus decimarum sunt temporales, i. The profit and fruits of tyths be reputed temporall [m]. Transaction, if it bee of tythes to come, must be respected according to the time and terme it is made for, namely, whether it be made in tempus modicum, i. For a short and limited time, or in perpetuum, i. (without limitation) for euer. In the first case it holdeth with the Bishops approbation and authority [n] in the other case it holdeth also if the right and interest of the Church be doubtfull, as where the Parishioner pleadeth against the Church, Exemption or Priuiledge. But where the right of the Church is Liquidum, i. where the Churches right is cleere, Transaction holdeth not, otherwise than by consent and authority supreame [o]. Transaction is often taken for Composition, and one for another [p].

[m] c. vestra. de loca.

[n] Arg. c. 2. & 3. sup. de ijs quæ fiunt à capit.

[o] Not. ea. à nobis eod. Pan. c. statuimus de transf.

[p] c. veniens. c.

Of Custome.

1 CUstome by the Canon Lawes holdeth or fayleth, diuerſly respected: if it be De transferendis decimis prædialibus, i. Of translating of tyths prediall (as afore hath been spoken in Composition) it holdeth [q].

[q] c. cum sint homines. & c. ad apostolicæ. eod.

2 If of personall tythes, as also before hath been sayd in composition, it holdeth not [r].

[r] c. paral.

3 Custome

3 Custome De non soluendis decimis, i. Of not yeelding of Tythes at all, holdeth not, and the reason is: Iuri naturæ & divino contraria est, i. Such a custome is contrary both to the Law of Nature, and the Law of GOD [f].

4 Custome De minori quantitate solvenda, i. Of yeelding lesse than the Tenth in quantity, holdeth in Personalibus, i. In personall tithes only after the opinions of some [t], but of others in prædiall also [u]; and practise also sheweth the same.

5 Custome De loco, i. Of place where Tythes ought to be left, holdeth [x].

6 Custome De tempore, i. Of the time of Tythes to be yeelded, holdeth [y].

7 Custome De modo, i. Of the manner and forme of yeelding of Tythes, holdeth [z].

[f] DD. id c. fi. de consuetud.

[t] c. in aliquibus. & ibi inno pan & alij. co..

[u] Rebuff. q. 13. nu 46.

[x] Host. in sum § fin. eod.

[y] DD. in c. ad apostolicæ præal.

[z] Rebuff. q. 13. præal. nu. 40. 50. 52.

TYTH WHAT IT IS, AND OF *how many sorts.*

TYth of the Latine *Decima*, is a Tenth part or portion of increase, commanded vnto *Moses* by whom it was delivered (at the appointment of *GOD*) to bee payd to the Sonnes of *Leui*, for their Ministerie wherein they serued in the Tabernacle [a]: in Law defined thus; viz. *Omnium bonorum licitè quæsitorum quota pars Deo, diuina constitutione debita*, i. Of all lawfull increase and gaine a certaine part (by constitution divine) due, and appertaining to God [b]. And they be either prediall, as that which doth arise and grow by reason and vertue of the grounds, viz. Fruits, and increase of Beasts, Fishes, Fowles [c], &c. Or they be personall, as that which ariseth by reason and vertue of lawfull and honest commoditie, so recovered and procured by art, science, or manuall Occupation of some person [d]. It is also to be noted, that tiths, some of them comprehended vnder these titles,

[a] Nu. c. 18.

[b] Card. consil. 28. pro evidentia. c. tua c. fin. eod.

[c] pervenit. præal. eo. c. non est. 22. e.

[d] c. ad apostolice. præ.

Prediall and perſonall, be called be the name of mixt tythes, of which ſort be ſuch as do riſe and grow partly by the grounds [e], and partly by the care, keeping, labour, and induſtry of ſome perſon [f]; as of Cattell ſubject to the Fox, Woolfe, and ſuch devouring beaſts, ſuppoſed to be partly of the grounds where they be bred and fed [g], even as a tree is ſuppoſed to be alſo partly of that place where the roots do grow, by the which it is nouriſhed [h]: ſo they be maintained by the grounds, but defended by the ſhepheards. Looke more of mixt tyths in the Twelfe queſtion. Some of them by the name of Greater Tythes, In Latine *Maiores ſive groſſa Decimæ* (as we tearme them) Great tythes: ſuch be of Corne and Pulſe [i]. Some of them be tearmed *Minores* or *Minutæ decimæ* (in our common ſpeech) Small tithes, ſuch be ſeedes, Hearbs, Egges [k], &c. mentioned in the ninth & foureteenth queſtions, 1.

(***)

[e] ca. commiſſum præal.
[f] c. apoſtolice. c. paſtoralis. eod.
[g] l. cum quidam ff. de fun. inſtruct.
[h] l. ſi plures. in fin. ff. arb. furt. cæſ.
[i] c. ex multiplici de dec.
[k] Glo. & D D. in c. cum ex tua. & c. ex multiplici. præal. cod.